AJN

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.464 OF 2004

Pahar Singh Roop Singh Parmar)
an Indian Inhabitant, residing at)
20/10, 1st floor, Joshi Bhavan, 6,)
Khetwadi, Mumbai - 4.) ... Petitioner
(Relative of Detenu)

Versus

1. The Union of India,)
through the Secretary to the)
Government of India, Ministry of)
Revenue, "B" Wing, 6th floor,)
Janpath Bhavan, Janpath, New)
Delhi - 100 001.)

2. Shri Somnath Pal,
the then Joint Secretary to the)
Government of India, Ministry of)
Finance, Department of Revenue,)
'B' Wing, 6th floor, Janpath)
Bhavan, Janpath, New Delhi - 1.)

3. The State of Maharashtra,)
through the Secretary to the)
Government of Maharashtra, Home)
Department (Special), Mantralaya)
Mumbai - 400 032.)

4. The Superintendent of Prison)
Mumbai Central Prison, Mumbai,)
Maharashtra.) ... Respondents

Mr. Maqsood Khan with Mr. J.D. Pawar for the petitioner.

Mr. R.M. Agarwal for respondents 1 and 2.

Mrs. Aruna Pai, A.P.P. for respondents 3 and 4.

CORAM: SMT. RANJANA DESAI &
A.S. OKA, JJ.

DATED: 30TH SEPTEMBER, 2004.

JUDGMENT:- (**Per Smt. Ranjana Desai, J.**)

1. The petitioner is a relative of one Dhuke Singh Chauhan s/o. Dharam Singh Chauhan (for convenience, "the detenu"), who has been detained by the Joint Secretary to the Government of India, Ministry of Finance, Department of Revenue, New Delhi, under an order of detention dated 28/4/1997 issued by him under section 3(1) of the Conservation of Foreign Exchange & Prevention of Smuggling Activities Act, 1974 (for short, "the COFEPOSA Act") with a view to preventing him, in future, from acting in any manner prejudicial to the augmentation of foreign exchange.

2. The order of detention, grounds of detention and material in support thereof were served on the detenu on 26/2/2004.

3. The grounds of detention state that on a specific information received in the office of the Directorate of Enforcement, Mumbai, that one Mohd. Zulfikar Siddique @ Jamaal of Mumbai has been indulging in unauthorised transaction in foreign currencies from persons coming from Bangalore and that he is likely to receive a substantial amount of foreign currency through a person at around 7.00 p.m. at his office situated at Nav Nidhan Bhawan, Mumbai, the said premises were searched on 26/8/1996 and as a result assorted foreign currencies amounting to approximately Rs.23 lakhs were seized along

with certain incriminating documents. In the search conducted at his residential premises on 26/8/1996, certain incriminating documents were also seized. The said Mohd. Zulfikar Siddique @ Jamaal was examined under section 40 of the Foreign Exchange Regulation Act, 1973 (for short, "the FERA") on 26/8/1996 in which he, inter alia, stated that he had been dealing in illegal/unauthorised purchase and selling of imported gold biscuits and foreign currencies with one Manohar Singh Rajput and that he got in contact with one Mateenbhai of Bangalore, who used to send foreign currencies from Bangalore for sale at Mumbai at a premium and for distribution of its sale proceeds as per Mateen's instructions; that he has been receiving foreign currencies from Mateenbhai every alternate days and used to sell these foreign currencies in market at black market rates in Mumbai. In his further statement dated 27/6/1996, while explaining the documents seized from his office premises, he stated that the same contain his day-to-day account of transactions in January and February, 1996; that the names and documents written on these pages are in codes and the figures appearing on these pages should be multiplied by thousand to arrive at the actual amount; that on these pages, one code name "TKR" also appeared and that "TKR" meant "Thakur" who deals in foreign exchange and operates from his shop in IInd Kamathipura Lane with telephone No.3086005; that Jamaal had also sold foreign exchange worth Rs.3,75,000/- to the said Thakur and the details of the same could also

be seen at page No.17 of the seized documents. One code name "TK" and amount in code "375" (meaning Thakur and Rs.3,75,000/-) is overwritten after the payment is received by him (Jamaal). The reference of name "Thakur" also appeared in other pages like 26 and 34 of the seized documents and transacted amount in code was also written. The said Thakur, whose code name is "TKR" is none other than the present detenu.

4. Taking lead from this, the shop premises of detenu were searched and Indian currency of Rs.1,80,000/- and certain incriminating documents were seized. In his statement, the detenu, inter alia, revealed that the said seized amount of Indian currency Rs.1,80,000/- was in respect of illegal sale of US$ 5,000 @ Rs.37.40 per Dollar, delivered in the afternoon of 10/9/1996; that among the documents seized, page Nos.1 and 2 contain account of foreign currency transactions, page No.3 is the bill of the telephone No.3086005 installed in his shop; that he used to destroy the papers after the foreign currency accounts were completed; that according to the entries appearing on page Nos.1 and 2, the detenu illegally purchased and sold, at unauthorised rates, foreign currencies worth Rs.3,69,184/- on 9/9/1996 and 10/9/1996; that this does not include foreign currency worth Rs.1,80,000/- sold by him (the amount which was seized from the detenu) and when questioned the detenu stated that he knew a person by name Mohd. Zulfikar Siddique @ Jamaal for the past one year; that he has

been regularly selling and purchasing foreign currencies from Jamaal; that Jamaal and his partner Manohar Singh could sell foreign currencies on a very large scale. He admitted that the name "TK" in code is Thakur and that he was illegally dealing in selling and purchasing foreign currencies by using the said code name. According to the amount written on pages 28, 29, 30, 31 and 32 of the diary seized from the office of Jamaal and Manohar Singh Rajput on 26/8/1996, the detenu had purchased foreign currency from them worth Rs.45,64,404/- during August, 1996. The detenu was shown all the documents seized from Jamaal. The documents and the statements of Jamaal and Manohar Singh Rajput disclosed that the detenu had transacted foreign currencies with Jamaal worth Rs.57,55,704/- which was done at the unauthorised rates in 1996. It appears that in addition to the account appearing on these pages, there was more business done with Jamaal but the details of the same were not available.

5. After perusing the statement of the detenu, all other statements and the relevant material, the detaining authority came to the conclusion that the detenu has been engaged in unauthorised transaction in violation of the provisions of the FERA and, therefore, it was necessary to detain him with a view to preventing him, in future, from acting in any manner prejudicial to the augmentation of foreign exchange. Hence, he issued the detention order.

6. Mr. Khan, the learned counsel appearing for the petitioner has challenged the impugned detention order only on one ground. He contended that the order of detention dated 28/4/1997 was served on the detenu on 26/2/2004 i.e. after lapse of almost seven years. He submitted that on account of this delay in execution of the detention order, the live link between the prejudicial activities in which the detenu is supposed to have indulged in and the need to issue an order of detention is snapped. Mr. Khan submitted that the order of detention is required to be served on the detenu like a warrant. In any case, the delay in serving the order of detention has to be properly explained. It was incumbent upon the detaining authority to disclose in the affidavit whether any prompt or effective steps were taken to serve the detention order. It was also necessary for the detaining authority to state on oath whether action under section 7(1)(a) or under section 7(1)(b) of the COFEPOSA Act was initiated or not without loss of time. It was also necessary for the detaining authority to ensure that the bail order passed in favour of the detenu is cancelled. Similarly, it was necessary for the concerned authority to bring to the notice of the Chief Metropolitan Magistrate, Bombay, before whom a complaint was filed against the detenu for the alleged violation of the provisions of the FERA, that the detenu was not available for effective service of the detention order issued against him. An application praying that

warrant be issued against the detenu ought to have been made to the learned Magistrate. The learned counsel urged that on account of this delay in serving the order of detention, the satisfaction purported to have been arrived at by the detaining authority is rendered not genuine.

7. Mr. Khan urged that at every stage, there is a delay. He submitted that the order under section 7(1)(b) of the COFEPOSA Act was issued belatedly on 4/2/1998 and it was published in the Official Gazette after a lapse of about 10 months i.e. on 21/12/1998. Mr. Khan also submitted that action under section 7(1)(a) was taken on 13/8/1998 i.e. after a lapse of one year and three and half months. It is incumbent upon the detaining authority to disclose whether the detenu's properties were attached under the provisions of the Criminal Procedure Code pursuant to action taken under section 7(1)(a) of the COFEPOSA Act. Mr. Khan contended that the affidavit of Mr. H.G. Singh, Assistant Director, DRI, indicates that all efforts to serve the order of detention were made only at one place i.e. the shop premises of the detenu. Mr. Khan drew our attention to the statement of the detenu dated 10/9/1996 wherein he has stated that he comes from Rajasthan. In that statement, the detenu has given his Rajasthan address and other particulars. However, no efforts were made to trace the detenu at Rajasthan. Mr. Khan drew our attention to the affidavit in rejoinder filed by a

relative of the detenu wherein it is stated that the detenu had left Mumbai prior to the passing of the detention order. Mr. Khan submitted that the fact that no efforts were made to trace the detenu at Rajasthan address itself signifies that the authorities were not serious about the execution of the order of detention.

8. Mr. Khan contended that the affidavit filed by the detaining authority does not explain the delay properly. The unexplained delay has thrown considerable doubt on the genuineness of the subjective satisfaction of the detaining authority and the order of detention based on such satisfaction is rendered malafide, null and void. In this connection, he relied upon the judgments of the Supreme Court in **S.K. Nizamuddin v. State of West Bengal, AIR 1974 SC 2353; S.K. Serajul v. State of West Bengal, AIR 1975 SC 1517; P.M. Harikumar v. Union of India & Ors., AIR 1996 SC 70, and Shafiq Ahmed v. D.M. Meerut & Ors., AIR 1990 SC 220.** Severely commenting on the alleged delay in taking action under section 7(1)(a) of the COFEPOSA Act, Mr. Khan relied on **P.U. Iqbal v. Union of India & Ors., AIR 1992 SC 1900** where there was nine months delay in taking action under section 7(1)(a) of the COFEPOSA Act. The said delay was held indicative of callousness and the detention order was set aside. Mr. Khan also relied upon a Division Bench decision of this court in **Writ Petition No.1259 of 1993 decided on 26/11/1993 (G.D. Kamat & Patankar, JJ.)** where the affidavit filed by the officer of the PCB, CID,

was found to be not satisfactory and the visits made to the detenu's residence were described as social visits and the detention order was set aside. Mr. Khan contended that similar visits have been paid to the detenu's shop premises in this case.

9. Mr. Khan also relied on **Ismail Shaikh Ali v. State of Maharashtra, 1998 (2) Crimes 35 (Bombay)**, where after examining the grounds of detention, this court came to a conclusion that there was nothing to indicate that the propensity or potentiality of the detenu was so acute that on account of the delay the live link was snapped. Mr. Khan submitted that even in this case, the grounds of detention or the statement of the detenu does not indicate that the detenu had immense propensity to indulge in prejudicial activities in future. The delay had, therefore, snapped the live link and the detention order must, therefore, be set aside.

10. Connected with the above submission of Mr. Khan is his contention that in view of the long lapse of time, the detaining authority ought to have considered the matter afresh as to whether the impugned order of detention is still warranted to be served on the detenu, especially as the detenu had not come to the adverse notice of the Enforcement authorities during the said interregnum. Mr. Khan contended that there is nothing to indicate that this aspect was considered by the detaining authority. On the contrary, contends Mr.

Khan, the affidavit filed on behalf of the detaining authority shows that there was complete non-application of mind of the detaining authority. In the affidavit, it is stated that the detenu was concealing himself from law and it is likely that he may have been indulging in some other prejudicial activities in one form or the other. This assertion is not borne out by any record and is merely a conjecture. It does not show fresh application of mind to the need of executing the detention order after such a long delay and, therefore, the detention order must be set aside. In this connection, Mr. Khan relied on **Bhawarlal Ganeshmalji v. State of Tamil Nadu & Ors., AIR 1979 SC 54, Union of India & Ors. v. Arvind Shergrill & Anr., 2000 AIR SCW 3258 and Union of India & Ors. V. Muneesh Suneja, 2001 AIR SCW 463**.

11. Mr. Khan contended that it is wrongly stated in the affidavit of the detaining authority that once proclamation is issued under section 7(1)(a), it is the duty of the detenu to appear before the Magistrate and give satisfactory explanation for not being available. According to Mr. Khan this is an erroneous approach. The onus never shifts. It is always on the detaining authority. Mr. Khan submitted that the judgment of this court in **Smt. Poonam Pathak v. The Union of India & Ors., 2002 All.M.R. (Cri) 2182** is per incuriam inasmuch as the attention of this court was not drawn to several judgments of the Supreme Court where it is stated that burden is always on the detaining authority. Mr. Khan

contended that in **S.K. Nizamuddin's case (supra)**, the Supreme Court has observed that when the State is called upon to answer a rule issued on a petition for a writ of habeas corpus, it is the obligation of the State or the detaining authority in making its return to the rule to place all the relevant facts before the court. Since relevant judgments were not considered in **Poonam Pathak's case (supra)**, reliance placed on that judgment is misplaced. Replying to the argument that the detenu could have produced some documents to prove that he was very much available at Rajasthan during the relevant period, Mr. Khan contended that the detenu could never have anticipated that a detention order would be issued against him. It was too much to expect him to keep a file of such documents. In any case, the burden is never on him. In support of this submission, Mr. Khan relied on a judgment of this court in **Inderkumar Khemani v. Union of India (Cri. Writ Petition No.922 of 1989) decided on 18/10/1989**.

12. Drawing our attention to section 7(1)(a) of the COFEPOSA Act, Mr. Khan contended that assuming there is any burden on the detenu, he is expected to discharge it in the trial court where he is expected to remain present and not in the present writ petition. Mr. Khan concluded his submissions by saying that for all the above reasons, the detention order must be set aside.

13. Mr. Agarwal, the learned counsel appearing for

respondents 1 and 2, on the other hand, contended that the affidavit of the detaining authority and of Mr. Singh, Assistant Director of DRI and the various reports and other documents annexed thereto, clearly establish that the detaining authority was all the while conscious of the urgency and the need to detain the detenu with a view to preventing him from indulging in prejudicial activities. The detaining authority, the sponsoring authority and the PCB, CID, have worked in synch. There was a total coordination between them. Repeated efforts were made by the DRI along with PCB, CID, to trace the detenu. The detenu was evading arrest. The shop premises where admittedly the detenu was doing business were either closed or, people found there, refused to give any information about the detenu's whereabouts. The detenu tried to hoodwink the authorities. All necessary steps such as filing an application for cancellation of bail and issuance of proclamation were taken. All these efforts have been properly set out in the affidavit of Mr. Singh. The respondents have given detailed and acceptable explanation for delay. Relying on the judgment of the Supreme Court in **Bhawarlal's case (supra)**, Mr. Agarwal contended that the delay in execution is caused due to the recalcitrant conduct of the detenu and he should not be allowed to benefit out of it. He submitted that in fact looking to the propensity of the detenu, it must be concluded that this delay has strengthened the link. Mr. Agarwal contended that the detaining authority was informed about the detenu's

conduct of evading arrest. In fact the detaining authority was monitoring the whole process. He produced the original file and drawing our attention to the notings made thereon, he contended that the detaining authority had considered whether after lapse of such a long time, it was necessary to detain the detenu. It was only after he was satisfied about the need to detain the detenu that the order came to be executed.

14. Mr. Agarwal contended that the judgments cited by Mr. Khan are not applicable to the facts of the present case because here the delay is properly explained. He contended that the judgment of this court in **Poonam Pathak's case (supra)** cannot be overlooked by saying that it is per incuriam because in none of the cases cited by Mr. Khan section 7 of the COFEPOSA Act was discussed from the point of view of onus. In support of his submissions apart from **Bhawarlal's case (supra) and Poonam Pathak's case (supra)**, Mr. Agarwal relied on the judgment of the Supreme Court in **Abdul Salam alias Thiyyan v. Union of India & Ors., AIR 1990 SC 1446** and three judgments of this court in **Cri. Writ Petition No.481 of 2003 decided on 28th & 29/11/2003 by H.L. Gokhale and S.S. Parkar, JJ. (Shaikh Mohammad v. State of Maharashtra & Ors.), Cri. Writ Petition No.1085 of 2002 decided on 18/12/2003 by S.B. Mhase & J.A. Patil, JJ. (Afzal Haroon Khan v. Union of India & Ors.) and Cri. Writ Petition No.1211 of 2003 decided on 10th & 11/3/2004 by S.S. Parkar & V.K. Tahilramani, JJ.**

(Jayesh Bhavsar v. Union of India & Ors.). Mr. Agarwal submitted that in view of the proper explanation given by the respondents in the affidavit in reply and in the light of the above judgments, the present petition be dismissed.

15. Before we deal with the rival contentions, we must make it clear that having perused the grounds of detention, we have not the slightest doubt in our minds about the detenu's potentiality or propensity to indulge in unauthorised transactions in foreign currencies, in future. We have already noted the gist of the grounds of detention. It appears that the detenu was a part of a huge racket of persons indulging in unauthorised transactions in foreign currencies. The detenu has admitted in his statement that the documents recovered from his shop contained accounts of foreign currency transactions and he used to destroy the documents after his foreign currency accounts were completed. It appears from the affidavit filed on behalf of the respondents that the sponsoring authority has burst a racket involving crores of rupees of foreign currency transactions and the total amount involved in respect of detenu was around Rs.64 lakhs. It appears that this clandestine activity was smoothly going on and was eroding the national economy till the DRI successfully arrested it.

16. Since the only challenge to the order is delay in its execution, it is necessary to see what explanation

has been offered by the respondents for it. In the affidavit filed on behalf of the detaining authority it is stated that the execution was delayed because of dilatory and dubious tactics adopted by the detenu who was absconding. There is no delay in tacking actions under sections 7(1)(a) and (b) of the COFEPOSA Act. Application for cancellation of bail was also moved. The detenu was aware of the detention order and, hence, he should not be allowed to take benefit of his own conduct. As regards actual efforts, reliance is placed on the affidavit filed by Mr. H.G. Singh, Assistant Director, DRI, before the Advisory Board.

17. In his affidavit, Mr. Singh has stated that the detention order was received by the DRI on 19/5/1997 and by the PCB, CID, on 20/5/1997 and since then incessantly efforts were made to apprehend the detenu. Team of officers of the DRI made personal calls at detenu's shop being Shop No.7, IInd Lane, 91-91A, Kamathipura, Shuklaji Street, Bombay (for short, "the said shop") on 20/5/1997, 20/6/1997, 15/7/1997, 10/8/1997, 28/8/1997, 15/9/1997, 17/10/1997, 9/11/1997, 19/11/1997, 26/6/1998, 10/2/1999, 10/1/2000, 20/2/2001, 30/11/2001, 16/9/2002 and 16/10/2003. Reports of all these visits are annexed to the petition. We have perused them. All the reports show that either the said shop was locked or the inmates of the said shop or the neighbours refused to disclose the whereabouts of the detenu. The officers were told that either the detenu had gone out of Bombay or that he

was not seen there for last six months or that his whereabouts were not known. The said shop stands in the name of Veradsingh. This is admitted in the affidavit filed in this court by the relative of the detenu. To this affidavits are annexed certain documents of the detenu to show that the detenu has property in Rajasthan. In one of the property documents, cultivation of certain agricultural land is shown as done by Veradsingh Veriyalsingh. In his statement recorded by the DRI officers, the detenu has admitted that his brother Veriyalsingh is cultivating land in Sachor village of Rajasthan. He has also admitted that he was dealing in cloth from the said shop. Therefore, the visits made by the DRI officers at the said shop are visits made at the proper place.

18. The DRI officers along with the officers of the PCB, CID, made efforts to serve the detention order on the detenu at the said shop on 21/5/1997, 26/5/1997, 7/6/1997, 19/6/1997, 28/6/1997, 21/7/1997, 19/8/1997 and 24/9/1997. They had similar experience on all these visits. Report dated 1/7/1999 annexed to the affidavit gives all the details of the efforts made. Another report dated 26/9/1997 is also annexed to the affidavit. It is addressed to the Joint Secretary to the Government of India by the ACP, Crime Branch, CID. In this report after setting out the futile efforts made to serve the detention order, a request is made to the Joint Secretary to move the sponsoring authority for cancellation of bail

of the detenu and for further action under section 7(1)(b) of the COFEPOSA Act.

19. It further appears from the affidavit that in August, 1997, an application for cancellation of detenu's bail was made on which the Magistrate issued notice. However, that notice also could not be served. A copy of the cancellation of bail application is annexed to the affidavit. Since it became difficult to locate the detenu, the detaining authority was informed, who after satisfying himself as contemplated under section 7(1)(b) of the COFEPOSA Act issued proclamation on 4/2/1998 under section 7(1)(b) of the COFEPOSA Act. A copy of the proclamation published in the Government Gazette is annexed to the affidavit. It is further stated that thereafter action under section 7(1)(a) was also taken. A copy of the said proclamation dated 13/8/1998 is enclosed to the affidavit.

20. Whether the explanation for the delay in executing detention order is proper and acceptable or not, depends on facts and circumstances of each case. The Supreme Court has repeatedly said that there are no hard and fast rules and it all depends on the circumstances of each case. In fact, in **P.U. Iqbal's case (supra)**, on which reliance is placed by Mr. Khan, the Supreme Court has clarified that "A question whether the delay is unreasonable and stands unexplained depends on facts and circumstances of each case". Similarly, in **Shafiq**

Ahmed's case (supra) on which reliance is placed by Mr. Khan, the Supreme Court has stated that it is not the law that whenever there is some delay in arresting, the subjective satisfaction of the detaining authority must be held to be not genuine or colourable. Each case must depend on its own peculiar facts. We must also usefully refer to **Bhawarlal's case (supra)** where there was about four years' delay in executing the order of detention. The Supreme Court rejected the argument that live link was snapped. It observed that the delay was not only adequately explained, but was the result of the recalcitrant or refractory conduct of the detenu and, hence, there was warrant to consider the link not snapped but strengthened.

21. The above judgments lead us to hold that the nature of the prejudicial activity in which the detenu is involved, the extent of the detenu's involvement, his propensity or potentiality to indulge in such activities, in future, and his conduct will have to be considered while judging whether the delay is properly explained and whether the live link is snapped or strengthened. In the nature of things the above circumstances will be different in each case and, therefore, there is no straight jacket formula. Each case must depend on its own peculiar facts.

22. In the facts of the present case, we are totally satisfied about the efforts made by the DRI and the PCB,

CID to execute the detention order. Constant efforts were made to serve the order at the said shop. Actions under sections 7(1)(a) and 7(1)(b) of the COFEPOSA Act was taken. Cancellation of bail application was filed. On all occasions when the officers visited the said shop, which stands in the name of the detenu's brother, the officers were hoodwinked. Looking to the propensity of the detenu, we are inclined to hold that the delay in execution, which is due to the recalcitrant or refractory conduct of the detenu has not snapped the link but has strengthened it.

23. We are not impressed by Mr. Khan's submission that there were no genuine efforts to serve the detention order because the officers had not paid any visit to the detenu's house at Rajasthan. We are in respectful agreement with the view taken by this court in **Poonam Pathak's case (supra)** that once proclamation is issued, the burden shifts on the detenu to give his explanation for his absence. He could have appeared before the Magistrate and proved that during the relevant period he was in Rajasthan. The detenu has not done so. We are also not impressed by Mr. Khan's submission that the detenu is expected to discharge the burden before the Magistrate and not in the writ petition and that in due course he would discharge the burden. Section 7 of the COFEPOSA Act pertains to the powers of the appropriate Government in relation to absconding persons. While examining whether the detenu was absconding or not or

whether the executing agency was callous, the fact that the detenu has not appeared before the Magistrate pursuant to the proclamation and he has not given any explanation for his absence or he has not stated that he was at any particular place, can always be considered as one of the circumstances by this court when it is dealing with the validity of the detention order. In our opinion, Mr. Khan's reliance on the judgment of this court in **Inderkumar Khemani's case (supra)** is misplaced because in that case this court was dealing with the duty of the detaining authority to supply documents to the detenu.

24. We reject the submission of Mr. Khan that the judgment of this court in **Poonam Pathak's case (supra)** is per incuriam because the attention of the court was not drawn to the judgments of the Supreme Court in **S.K. Nizamuddin's case (supra)** and in **S.K. Sirajul's case (supra)**, where the Supreme Court has held that it is for the detaining authority to explain the delay. In none of the judgments cited by Mr. Khan the Supreme Court has considered section 7 of the COFEPOSA Act as placing onus on the detenu. We also find nothing wrong in the assertion made in the affidavit filed on behalf of the detaining authority that the detenu was concealing himself from law and it is likely that he may have been indulging in prejudicial activities. This apprehension is based on the nature of the prejudicial activity in which the detenu is involved and his propensity. This

averment cannot be cited as an instance of non-application of mind of the detaining authority.

25. So far as the judgments of the Supreme Court in **S.K. Sirajul's case (supra) and S.K. Nizamuddin's case (supra)** are concerned, they are not applicable to the present case. In those cases, the Supreme Court was dealing with detention under Maintenance of Internal Security Act and not detention under COFEPOSA Act where there are cases involving smuggling and foreign exchange racketeering. Moreover, there was no explanation for delay. In **P.M. Manikumar's case (supra)**, the positive stand of the respondents was that during the entire period the detenu was out of India. In spite of this, visits were made to his residence which were described by the Supreme Court as empty formality. There were no earnest steps taken to serve the detention order. It is against the backdrop of these facts that the Supreme Court observed that there was compliance only with the letters of section 7 of the COFEPOSA Act and not its spirit. This judgment is also not applicable to the present case. Similarly **P.U. Iqbals's case (supra)**, on the facts before it, the Supreme Court came to a conclusion that there was no proper explanation for delay and the approach of the respondents was lucid and apathetic. Such is not the case here. In **Shafiq Ahmedi's case (supra)** also there was no satisfactory explanation for delay. In **Bhagwatilal's case (supra)**, there was no satisfactory explanation; there was no

attempt made to cancel the bail and on the contrary the sponsoring authority had gone on seeking extension of bail. Such are not the facts here. In our opinion, therefore, the judgments cited by Mr. Khan do not help the detenu. In this connection, we may only refer to **Abdul Salam's case (supra)** where the Supreme Court was dealing with delay in executing detention order issued under COFEPOSA Act. After taking a resume of the relevant cases, the Supreme Court observed that mere delay in arresting the detenu does not result in vitiating the subjective satisfaction of the detaining authority if the delay is reasonably explained. On similar grounds, this court in **Afzal Maroon's case (supra)** condoned the delay of about six years in executing the detention order. In our opinion viewed in the light of the above judgments, it must be held that the delay in executing the order is properly explained and, hence, the satisfaction of the detaining authority is not impaired. The delay is due to the recalcitrant conduct of the detenu and, hence, considering the propensity of the detenu, the live link is strengthened and not snapped.

26. We must now deal with the connected submission of Mr. Khan that while executing the detention order after such a long delay, there must be fresh application of mind of the detaining authority to the fact whether the order still needs to be executed. We have already noted that Mr. Agarwal, the learned counsel for the

respondents has shown us the file which indicates that this aspect of the matter was present in the mind of the detaining authority and after the detaining authority was satisfied about the need to execute the detention order, in view of the propensity of the detenu that the detention order was executed. It is, therefore, not necessary to refer to the judgments cited by Mr. Khan on this aspect. But we may again refer to **Bhawarlal's case (supra)** where the Supreme Court was dealing with delay in execution and fresh application of mind by the detaining authority. The Supreme Court observed :

> "The court in appropriate cases may assume that the link is "snapped" if there is a long and unexplained delay between the date of the order of detention and the arrest of the detenu. In such a case the Court may strike down order of detention unless the grounds indicate a fresh application of the mind of the detaining authority to the new situation and the changed circumstances. But where the delay is not only adequately explained but is found to be the result of the recalcitrant or refractory conduct of the detenu in evading arrest, there is warrant to consider the "link" not snapped but strengthened."

We are of the opinion that the present case is covered by the above observations. This submission of Mr. Khan must, therefore, fail.

27. In the ultimate analysis, therefore, we hold that the impugned detention order is perfectly legal and valid. It cannot be said that the subjective satisfaction of the detaining authority is vitiated or live link is snapped. In our opinion, the delay in execution is properly explained. It is due to the recalcitrant conduct of the detenu and it has resulted in strengthening the live link. In the circumstance, the petition is dismissed.

(SMT. RANJANA DESAI, J.)

(A.S. OKA, J.)